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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,926	09/29/2003	Gregory L. Sundberg	279.666US1	7372

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EXAMINER
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SMITH, TERRI L

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

XII

**Advisory Action**  
**Before the Filing of an Appeal Brief**

Application No.

10/673,926

Applicant(s)

SUNDBERG, GREGORY L.

Examiner

Terri L. Smith

Art Unit

3762

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED on 03 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-6 and 8-26.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

GEORGE R. EVANISKO  
PRIMARY EXAMINER

Continuation of 3. NOTE: The insertion of the phrases "including one or more helical drive grooves" and "and rideable within the helical drive grooves allowing at least one of advancing or retracting of the fixation helix to the lead body" (claim 1) and "the housing including a guide disposed on an inner surface thereof," "and," "rides along the guide allowing", "at least one of advancing or retracting of" and "relative to the lead body" (claim 8) and "protruding from the inner surface of the housing" (claim 9) and "an outer axial surface" (claim 17) and "protruding" (claim 25); and the deletion of the phrases "that advances the fixation helix" and "adapted to guide the drive mechanism" (claim 1) and "advances", "and", and "a guide disposed within an inner surface of the housing" (claim 8) and "a" (claim 17) and "disposed" (claim 25) raises new issues which require further search and consideration.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments regarding amended independent claims 1 and 8 are related to the new issues which will require further search and consideration.

In response to the statement that Applicant cannot find in the cited portions of Li (U.S. Patent 5,259,395) the limitations as recited in claim 15, Examiner asserts that the Office Action mailed on 03 August 2006 clearly cites the appropriate references in the Li art in paragraph 6 on page 3. The limitation of "a piston electrically coupled with a conductor" is supported as noted by Applicant. One of ordinary skill in the art would recognize that the electrical coupling is accomplished by virtue of the rotor body being in direct contact with the electrically conducting sleeve 32 which is interconnected with the electrical conductor 36 (Fig. 2) that interconnects the source of electrical energy thereby providing the electrical coupling. Examiner reminds Applicant that "adapted to" language is being used for the portion of the claim that Applicant alleges is not found in Li (the guide interacting with the first portion of the fixation helix as claimed) and that the Li structure simply needs to be capable of performing said limitation. (See MPEP 2106 II. C.) Consequently, as interpreted and cited by Examiner in the Office Action and as noted by the Applicant, the Li art discloses "guide ... adapted to interact with a first portion of a fixation helix.

Regarding Applicant's assertion that certain limitations of the recited claim 19 cannot be found in the cited portions of Bisping (U.S. Patent 4,282,885), Examiner's interpretation of the Bisping reference as set forth in said Office Action in paragraph 19 is maintained. By virtue of the helix being physically located on the protective core is evidence that it is supported by the structure. Applicant's arguments asserted against claim 19 that "the first portion of the helix contacting the protective core is not able to ride along the guide within the housing as claimed" are moot because claim 19 does not recite this claimed limitation.